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KOPERASI LADANG PEKEBUN-PEKEBUN KECIL MALAYSIA BHD

v.

B

PIHAK BERKUASA KEMAJUAN PEKEBUN-PEKEBUN KECIL PERUSAHAAN GETAH

HIGH COURT MALAYA, KUALA LUMPUR
ASMABI MOHAMAD JC
[CIVIL ACTION NO: S3-22-353-1998]
C 2 MAY 2013

LAND LAW: *Ownership - Claim for - Subject lands registered in defendant's name - Whether indefeasibility of title could be challenged - Whether defendant held property on trust for plaintiff - Whether existence*
D *of trust proven - National Land Code, s. 340(2)(a), (b) or (c)*

CONTRACT*: Formation - Oral contract - Whether there was valuable consideration - Whether parties agreed on certain terms - Whether essential elements to constitute valid contract present*

E ***LIMITATION****: Accrual of cause of action - Claim for recovery of land - Whether plaintiff's action time barred*

The plaintiff was a co-operative society that represented rubber smallholders in respect of the schemes prescribed by the Rubber
F Industry Smallholders Development Authority ('the defendant'), a statutory body established under the Rubber Industry Smallholders Development Authority Act 1972 ('the Act'). The defendant, a successor of a body known as the Replanting Board ('the RB'), was entrusted by the Act, which came into force in 1973, to
G carry on and continue with various schemes initiated by the RB for the benefit of the smallholders. Various state authorities had alienated some 114,575 acres of plantation land situated in various states in Malaysia ('the lands') to the defendant for the block new planting of rubber trees and other crops under five schemes
H prescribed by the RB. The lands were registered in the name of the defendant but the plaintiff claimed that the lands ought to have been registered in its name and ought to be held by it for the benefit of its members, who were smallholders. When the dispute pertaining to the ownership of the lands first arose in
I 1987, the then Deputy Prime Minister ('the former DPM') had directed two pieces of the lands to be returned to the plaintiff. Subsequent to that, the plaintiff had again sought the intervention

of the former DPM for the remainder of the lands alienated by the state authorities ('the subject lands') to be registered in its name. The former DPM had, however, refused to accede to this request and issued a letter containing a directive that the subject lands should be registered in the name of the defendant and managed by the defendant for the benefit of all smallholders at large. The plaintiff filed an action against the defendant premised on three causes of action, namely breach of contract, breach of trust and the tort of conversion. It was the plaintiff's case that there was an oral contract between both parties for the defendant to hold the subject lands on behalf of the plaintiff for the benefit of its members and that the defendant had acted in breach of the oral agreement. Alternatively, the plaintiff claimed that the defendant was to hold the subject lands on trust for the plaintiff's members, who had applied to participate in the schemes, but had acted in breach of trust. The plaintiff's third cause of action was premised on the tort of conversion. The defendant contended that under the Act, it was the sole body entrusted by the law to implement and administer the various schemes for the benefit of all smallholders whether they were members of the plaintiff or otherwise. The defendant argued that there was no valid and binding contract between the parties as claimed by the parties as the essential elements to constitute a valid contract were missing in the factual matrix. In any case, it was the defendant's contention that since the subject lands were alienated and registered in its name pursuant to the National Land Code ('NLC'), it was the legal and beneficial owner of the subject lands. The defendant also raised the defence of limitation to defeat the plaintiff's claim.

Held (dismissing plaintiff's claim with costs):

(1) As the subject matter of the dispute concerned ownership of the subject lands, it was necessary to examine the rights of the defendant, whether beneficial or legal, over the subject lands in the context of the NLC. Under the NLC, title to an alienated land was indefeasible only upon registration. However, the indefeasibility of the title could be challenged under the circumstances provided under s. 340(2)(a) to (c). In the present case, the plaintiff could not show that its case fell under one of the circumstances under s. 340(2)(a), (b) or (c)

of the NLC in order to challenge the title held by the defendant. Hence, legal title of the subject lands vested upon the defendant upon alienation and registration. The defendant was the rightful owner of the subject lands and on this reason alone, the plaintiff's case ought to be dismissed. (paras 35, 38-43)

(2) For a valid trust to exist, the three essentials, namely certainty of words, certainty of subject and certainty of object should be present. From the documentary evidence, there was no evidence that the first certainty had been satisfied by the plaintiff. The clear words of the documents adduced did not show any intention on the part of the RB and/or the defendant to create a trust in favour of the plaintiff over the subject lands. The plaintiff claimed that the documentary evidence led to the conclusion that it was to be allowed to take over the management of the schemes initiated by the RB, but it was clear that upon the coming into force of the Act, the government had every intention that the defendant was to carry out the schemes and not other bodies such as the plaintiff. The plaintiff had also failed to prove that certainty of subject, which in the present case would relate to the subject lands, existed. This was because prior to 1973, the titles, locations and size of the subject lands could not be identified and ascertained. The plaintiff was not able to provide a comprehensive list of its members who had applied to participate in the scheme and as such, there was no definite beneficiary. Based on the totality of the evidence, the plaintiff's claim premised on the fact that the defendant was holding the subject lands on trust had to fail. (paras 46, 48-55, 58 & 59)

(3) The law recognises oral contracts and if it was true that a valid and binding contract had been created, the plaintiff had the burden to prove the existence of such a contract and its validity. The documentary evidence relied upon by the plaintiff did not stipulate or mention the existence of valuable consideration, which was one of the essential requirements for a valid contract to exist. The purported agreement also lacked the element of certainty as to the terms of the contract. As such, there was no justification that there existed a valid and binding contract between the parties. (paras 62-66)

(4) The plaintiff's reliance on the tort of conversion to premise its claim against the defendant was misplaced and had no legal basis as this tort is only applicable to chattels. (paras 67 & 70)

(5) The plaintiff's cause of action would have arisen as early as the 1970s. As this was a claim for recovery of land, any claim against the defendant ought to have been commenced within 12 years from the date of the accrual of the cause of action. Even assuming the latest date was to be taken into consideration, which was 1980, the plaintiff ought to have commenced its claim on or before 1992. However, the plaintiff had only commenced the present action in 1998. The plaintiff was precluded from raising the issue that the facts relating to the alienation and registration of the subject lands were not within its knowledge, when the officers of the defendant and plaintiff were in fact the same persons. Therefore, the plaintiff's action ought to be dismissed. (para 71)

Case(s) referred to:

Amanah Butler (M) Sdn Bhd v. Yike Chee Wah [1997] 2 CLJ 79 CA ***(refd)***

Currie v. Misa [1875] LR 10 Ex 153 ***(refd)***

Director of Forestry, Sabah & Anor v. Mau Kam Tong & Ors And Another Appeal [2010] 3 CLJ 377 CA ***(refd)***

Dr Ti Teow Siew & Ors v. Pendaftar Geran-Geran Tanah Negeri Selangor [1981] CLJ 134A; [1981] CLJ (Rep) 142 HC ***(refd)***

GN Muey Muey v. Goh Poh Choo [2000] 2 SLR 578 ***(refd)***

Keongco Malaysia Sdn Bhd v. Ng Seah Hai [2011] 1 LNS 703 HC ***(refd)***

Koperasi Wanita Sarawak Bhd & Anor v. Robert Sim Teck Hock [2005] 3 CLJ 188 CA ***(refd)***

Lloyds Bank Ltd v. Chartered Bank of India, Australia & China [1929] 1 KB 40 ***(refd)***

Macon Works & Trading Sdn Bhd v. Phang Hon Chin & Anor [1975] 1 LNS 93 HC ***(refd)***

Milroy v. Lord [1862] 4 De GF 264 ***(refd)***

Mohammad Buyong v. Pemungut Hasil Tanah Gombak & Ors [1981] 1 LNS 114 ***(refd)***

North East Plantations Sdn Bhd v. Pentadbir Tanah Daerah Dungun & Anor [2011] 2 CLJ 392 CA ***(refd)***

Nuri Asia Sdn Bhd v. Fosis Corporation Sdn Bhd [2006] 5 CLJ 307 HC ***(refd)***

Oakley v. Lister [1931] 1 KB 148 ***(refd)***

OBG Ltd and Another v. Allan and Others [2008] 1 AC 1 ***(refd)***

Pemungut Hasil Tanah, Kota Tinggi v. United Malayan Banking Corp Bhd [1982] CLJ 23A; [1982] CLJ (Rep) 244 FC ***(refd)***

Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd [2010] 8 CLJ 629 FC ***(refd)***
Re Kayford Ltd [1975] 1 All ER 604 ***(refd)***
RHB Bank Bhd v. Kwan Chew Holdings Sdn Bhd [2010] 1 CLJ 665 FC ***(refd)***
Sang Lee Company Sdn Bhd v. Suburamaniam Mayawan & Ors [2011] 1 CLJ 167 CA ***(refd)***
State Government of Perak v. Muniandy [1985] 1 LNS 117 SC ***(refd)***
Suharta Development Sdn Bhd v. Ho Lik Sdn Bhd [1994] 1 CLJ 407 HC ***(refd)***
Syarikat Perusahaan Seri Connolly Sdn Bhd v. Pengarah Tanah dan Galian, Negeri Perak & Anor [1998] 2 CLJ Supp 517 HC ***(refd)***
Thiagrajen Veluchamy v. Suraish Naidu Re Naidu & Anor [2009] 1 LNS 537 HC ***(refd)***
Yap Nyo Nyok @ Yap Yoon Jin (F) v. Bath Pharmacy Sdn Bhd [1993] 3 CLJ 188 HC ***(refd)***
Yeong Ah Chee @ Yan Hon Wah v. Lee Chong Hai & Anor & 13 Other Appeals [1994] 3 CLJ 20 SC ***(refd)***

Legislation referred to:
Limitation Act 1953, ss. 9(1), 22(2)
National Land Code, ss. 76, 78(3), 89, 92, 340(2)(a), (b), (c)
Rubber Industry (Replanting) Fund Ordinance 1952, ss. 4, 10(1), 16(1)
Rubber Industry Smallholders Development Authority Act 1972, ss. 6, 8

Other source(s) referred to:
Professor Jill E Martin, *Halsbury & Martin Modern Equity*, 16th edn, 2001, p 69
Salmond on Torts, 7th edn, p 375

For the plaintiff - Muhammad Shafee Abdullah (Badrul Munir Mohd Bukhari & Nurul Atiqah Zaini with him); M/s Shafee & Co
For the defendant - DP Naban (SM Shanmugam, Raphael Kok & Ashley Lee with him); M/s Lee Hishamuddin Allen & Gledhill

Reported by Vani Krishnan

JUDGMENT

Asmabi Mohamad JC:

Introduction

[1] The plaintiff is a co-operative society established on 7 January 1970 under the name of Syarikat Kerjasama Ladang Pekebun-Pekebun Kecil Malaysia Bhd. On 20 March 1982 the plaintiff had changed its name to Koperasi Ladang Pekebun-Pekebun Kecil

Malaysia Bhd ("Koperasi"). The defendant is a statutory body established under the Rubber Industry Smallholders Development Authority Act 1972 ("RISDA Act") and the successor of a body known as the Replanting Board which was established under the Rubber Industry (Replanting) Fund Ordinance 1952 ("the Ordinance"). A B

[2] By its amended summons and statement of claim dated 20 February 2006 ("ASOC"), the plaintiff had commenced this action against the defendant based on three causes of action: breach of contract, breach of trust and the tort of conversion. C

[3] This was a 1998 case and the oldest case which appeared in the Old Civil Courts' Aging List. The decision of this case was a much awaited decision as it affects some 114,575 acres of plantation lands valued at almost RM2,668,228,000. Both parties had waited for almost 14 years for the dispute between them to be resolved by this court. D

[4] In a nutshell this case concerned a dispute over ownership of 114,575 acres of plantation lands situated, among others, in states such Kedah, Perak, Terengganu, Pahang, Negeri Sembilan and Johor. These lands except for the Bukit Keramat Land in Sungai Lui, Negeri Sembilan ("Bukit Keramat Land"), and the Sungai Ambat Land in Mersing, Johor ("Sungai Ambat Land") under items 16.4 and 16.5 in para. 16 of the ASOC, were alienated by the various State Authorities to RISDA for the block new planting of rubber trees as well as other crops under the schemes known as the Rancangan Tanam Baru Berkelompok ("RTBB"). There were five schemes prescribed by the Replanting Board under RTBB using the funds collected from the cess on the production and exportation of rubber which fund was managed by the Replanting Board set up under the Ordinance. E F G

[5] The plaintiff claimed that the subject lands ought to have been registered in its name and ought to be held by the plaintiff for the benefits of the smallholders who are members of the plaintiff and/or registered with the plaintiff. The defendant, on the other hand, disputed the plaintiff's claim over the ownership of 108,198 acres of land on the ground that the subject lands had been alienated to the defendant and registered in the name of the defendant. Hence the defendant has the legal and beneficial interest over the subject lands. The defendant further claimed that H I

as the subject lands had been registered in the name of the defendant pursuant to s. 340 of the National Land Code ("NLC"), the titles of the subject lands held by the defendant are indefeasible.

[6] The dispute between the plaintiff and the second defendant proceeded by way of a full trial with 12 witnesses having testified for the plaintiff and two witnesses testified for the defendant. After hearing the evidence of the plaintiff's witnesses ("PW1 to PW12") and the defendant's witnesses ("DW1 & DW2") and upon hearing the submissions by the respective learned counsels, I found that the plaintiff has failed to prove its case on the balance of probabilities. Hence I dismissed the plaintiff's case with costs.

[7] Aggrieved by the said decision, the plaintiff appealed to the Court of Appeal against the whole of the said decision.

The Pleadings

[8] Perhaps it would be appropriate at this juncture for this court to analyse each party's pleadings and ascertain the basis of the plaintiff's claim against the defendant and whether there are merits in the defence raised by the defendant.

ASOC

[9] A perusal of the plaintiff's ASOC would disclose that the plaintiff had premised its case against the defendant based on the following causes of action:

(a) Breach of oral agreement between the plaintiff and the defendant, in that, there was an oral contract between both parties for the defendant to hold the subject lands on behalf of the plaintiff for the benefits of the smallholders who are members of the plaintiff and who had applied to participate in the RTBB Schemes;

(b) Breach of trust as the defendant was supposed to hold the subject lands on trust for the benefit of the smallholders who are members of the plaintiff who had applied to participate in the RTBB Schemes; and

(c) The tort of conversion.

The Defence

[10] In refuting the plaintiff's claim the defendant pleaded the following:

(a) The defendant which is the successor of the Replanting Board is entrusted under the RISDA Act to assume the responsibilities and duties of its predecessor and to carry on with the RTBB Schemes which were prescribed under the Ordinance for the benefits of the smallholders. The defendant is vested with the powers to own lands in its name for the purpose of promoting the objective of its establishment under s. 6 of the RISDA Act. Under the RISDA Act, the defendant was to take over the responsibilities of its predecessor, the Replanting Board and to continue with the RTBB Schemes initiated by the Replanting Board;

(b) All these lands were either applied by RISDA and/or initially applied by its predecessor, the Replanting Board, in the name of the Koperasi. However after the establishment of RISDA, the subject lands were alienated to RISDA and registered in RISDA's name. Therefore RISDA is the beneficial as well as the legal owner of the subject lands. Pursuant to s. 340 of the NLC, the titles held by RISDA are indefeasible;

(c) The defendant denied the existence of the alleged oral contract between the plaintiff and the defendant as claimed by the plaintiff;

(d) The defendant had also denied that there was a trust created, in that the defendant is to hold the subject lands for the plaintiff which was envisaged in the December 1971 and the May 1973 resolutions as claimed by the plaintiff;

(e) The defendant had also claimed that two out of the subject lands, the Bukit Keramat Lands and the Sungai Ambat Lands were never registered in the name of RISDA. The Bukit Keramat Land and the Sungai Ambat Land had been handed over by RISDA to the plaintiff upon the directive by the late Tun Ghafar Baba. Further the defendant claimed that the land described as the Bukit Saga Lands had never been alienated and/or registered in the name of RISDA; and

(f) The defendant had also raised the defence of limitation as well as *res judicata*.

The Documents

[11] At the outset of the trial parties have agreed for the following documents to be used:

Description		Document
i. Bundle of Pleadings	-	"A"
ii. Common Agreed Document (B to T)	-	"B1" to "B1a"
iii. Common Agreed Document (B & C)	-	"B"
iv. Common Agreed Document (B & C)	-	"B"
v. Statements of Agreed Facts	-	"F"
vi. Further Statements of Agreed Facts	-	"F1"
vii. Statement of Issues To Be Tried	-	"G"
viii. Summary of Plaintiff's case	-	"H"
ix. Defendant's Opening Statement	-	"I"

The Issues To Be Tried

[12] The statement of issues to be tried is as stated in the document marked as "G". For ease of reference the issues posed for this court's determination are follows:

(a) Was there an agreement between the plaintiff and the defendant that the subject lands obtained from the State Governments for the Rancangan Tanaman Baru Berkelompok ("RTBB") Scheme will be developed by the defendant for the RTBB smallholders who are members of the plaintiff?

(b) Was there an agreement between the plaintiff and the defendant that the defendant would hold the subject lands on trust for the plaintiff until the plaintiff takes over the said lands after development by the defendant?

(c) Did the defendant breach any agreement and/or the RTBB requirements when the defendant applied and registered the subject lands in the defendant's name?

(d) Does the plaintiff represent all the rubber smallholders in respect of the RTBB Scheme?

(e) Whether the purpose of setting up the plaintiff was to represent all the rubber smallholders in respect of the RTBB Scheme? and

(f) Is the plaintiff's claim against the defendant time-barred?

The Undisputed Facts

[13] I had perused the undisputed facts prepared by both learned counsels for the plaintiff and the defendant in their written submissions. As those facts were so comprehensive, I could not do any better than to adopt those facts and summarise the facts as follows:

The Replanting Board, The Fund And RTBB

(a) The Replanting Board was established in 1952 under s. 4 of the Ordinance. The first objective of the Replanting Board was for collection of cess on production and export of rubber to be paid into the Rubber Industry (Replanting) Fund established under the Ordinance ("Replanting Fund"). Its second objective was to administer the Replanting Fund and to make financial provision from public funds for approved schemes for the replanting of existing rubber, the planting of new rubber and other crops ("preamble of the Ordinance" at p. 2 of the defendant's Bundle of Authorities (vol. 1) (DBOA(1)).

(b) The fund of the Replanting Board was divided into two types of fund namely fund "A" and fund "B". Fund "A" was established to benefit the owners of 100 acres of land or above planted with rubber or approved by the Replanting Board to participate in fund A. Whilst fund "B" was established for owners who did not participate in fund "A" or smallholders who earned less than 100 acres of lands (ss. 10(1) & 16(1) of the Ordinance).

(c) Between 1952 to 1971, the Replanting Board had prescribed various schemes for the administration of fund "B" to provide financial support to smallholders for replanting rubber trees and planting new rubber trees and other approved crops (Scheme No. 1: 1952-1953 (see exh. D20 at p. 165 of Bundle of Exhibits vol. 1 (BOE (1)) and at pp. 33-34 of DBOA (1); Scheme No. 2: 1953-1960 (see exh. D21 at p. 167 of BOE (1) and at pp. 35-38 of DBOA (1)); Scheme No. 3: 1960-1967 (see exh. D22 at p. 171 of BOE (1) and at pp. 39-43

of DBOA (1)); Scheme No. 4: 1967-1971 (see exh. D23 at p. 176 of BOE (1) and at pp. 46-51 of DBOA (1)); Scheme No. 5: 1971-1980 (see exh. D24 at p. 182 of BOE (1) and at pp. 52-59 of DBOA (1)) ("the schemes").

(d) These schemes were administered by the Administrator of Fund "B" for the Replanting Board. The total numbers of the members of the schemes were between eight to nine, five of whom were from the Replanting Board and the rest from other departments of the Government such as the Ministry of Agriculture and Lands, Ministry of Commerce and Industry and the State Governments (see pp. 33, 35, 39, 46, and 52 of DBOA (1)).

(e) Through Schemes 1, 2, 3 and 4, the smallholders were provided grants to enable them to replant rubber trees. As for Scheme 3 the smallholders were also provided assistance with planting of new rubber trees.

(f) The effectiveness of these schemes were re-evaluated by the Replanting Board in 1969 and upon re-evaluation, it discovered some weaknesses in Scheme 4 as Fund "B" was confined to smallholders who replanted their old rubber trees. Further it was also discovered that the efforts done by the respective smallholders were not too encouraging.

(g) The Replanting Board then came up with the concept of block new planting in order to overcome the weaknesses of the existing scheme. It was of the view that through the concept of block new planting, the acreage of newly planted rubber would be increased and this would enable the smallholders to earn a living by tapping their existing old trees. The Replanting Board had also wanted to discourage the smallholders from planting new trees in small acreages but to participate in block new planting. The block new planting scheme was known as "Rancangan Tanah Baru Berkelompok" ("RTBB").

(h) The Replanting Board realised that in order to achieve the above objective, it would require large acreage of lands all over Malaysia which it had to apply to the relevant State Authorities for alienation. At the material time the Replanting Board took the view that it could not own lands in its own name. Therefore it was decided that in order for the scheme

to be implemented there must be a land-owning co-operative. Hence on 7 January 1970, the plaintiff was established for the above purpose of the RTBB.

(i) Scheme 5 was introduced on 1 January 1971. This scheme provided financial assistance to the smallholders not only for the purpose of replanting but also for new planting (see exh. D24 at p. 55 of DBOA (1) & p. 185 of BOE (1)). This scheme provided assistance to the smallholders to plant new rubber trees on land owned by them or by virtue of them being shareholders in a land owning co-operative society.

(j) In 1971 there was a decision made by the government for the Replanting Board to implement all block new planting scheme instead of other bodies, including the Koperasi. It was also decided that such lands were to be administered by the Replanting Board until such time when the Replanting Board decides that the said lands to be handed over to the Koperasi to manage (see exh. P1 at p. 1 of BOE (1)).

(k) As a follow up from the above decision, steps were taken by the Replanting Board to apply to States of Kedah, Perak (exh. P127 at p. 1748 of BOE (6)), Johor (exh. D6 at p. 40 of BOE (1)), Negeri Sembilan (exh. 134 at pp. 1765-1767 of BOE (6)) and Pahang (exh. 126 at p. 1746 of BOE (6)) for these lands to be alienated for the implementation of Scheme 5. During this time, these applications were made by the Replanting Board in the name of the Koperasi.

Establishment Of RISDA

(l) The Replanting Board ceased to exist after the coming into force of the RISDA Act on 1 January 1973. As on 1 January 1973 the responsibility of the Replanting Board was transferred and vested with RISDA. Hence the responsibility in replanting, new planting and block new planting of rubber and other approved crops were taken over by RISDA (s. 8 of the RISDA Act; exh. D103 at p. 1602 of BOE(6)).

(m) Pursuant to meetings dated 19 April 1973, 8 May 1973 and 22 May 1973 respectively (exh. P15 at pp. 109-110 of BOE (1); exh. P3 at pp. 28-36 of BOE(1) and exh. D97 at pp. 1548-1555 of BOE (6)) the following were resolved:

A (i) All matters pertaining to block new planting for the smallholders who are entitled to the scheme shall be performed by RISDA;

(ii) Lands required for the implementation of the scheme are
B owned by RISDA on behalf of the smallholders who participate in the scheme. RISDA too will issue out shares to these smallholders;

(iii) RISDA will be responsible for the development of the
C lands including all costs for the development of the lands and incidental costs thereto which costs shall be utilised from the grant due to the smallholders;

(iv) All contracts to be entered for the purpose of the development of the lands shall be executed by RISDA and
D using the resources of RISDA including its officers;

(v) The plaintiff would transmit lists of its eligible members to participate in the scheme;

(vi) RISDA would liaise with the plaintiff with regards to those
E members who had submitted their applications for grants under the scheme and the names of the members who had been accepted into the scheme;

(vii) RISDA would allow the plaintiff to take over the scheme
F after it had received the report and upon being satisfied with the plaintiff's financial capability as well as its capacity to manage the scheme; and

(viii) RISDA would eventually hand over the scheme to the
G plaintiff upon being satisfied that it has the capacity in terms of finance and human resources management capabilities to manage the scheme.

[14] Around 11 February 1974 Scheme 5 was amended to
H increase the eligibility of smallholders to participate in the scheme from those with the minimum acreage of five to seven (exh. D99 at pp. 1558 to 1562 of BOE (6)).

[15] Around this time, applications were made by RISDA to the relevant State Authorities for alienation of lands, including those
I applications which were applied earlier by the Replanting Board in the name of the Koperasi which were pending approval by the State Authorities of Kedah, Johor and Pahang (exh. D118

pp. 1732-1733 of BOE (6); exh. D57 at p. 543 of BOE (2); exh. P58 at pp. 553 to 557 of BOE (2); exh. D120 at pp. 1737 to 1739 of BOE (6)).

[16] The Replanting Board and later RISDA had received a total of 18,048 applications by smallholders to be accepted into the RTBB between 1972 to 1974 (exh. D110 at pp. 1640 and 1645 of BOE (6); exh. D111 at pp. 1649-1650 of BOE (6); exh. D112 at pp. 1655-1656 of BOE (6)).

[17] With the introduction of Scheme 6 on 7 July 1981, Scheme 5 had come to an end (exh. D90 at pp. 911 to 921 of BOE (4)).

Dispute over Ownership of Subject Lands

Application For Alienation Of Subject Lands

[18] The dispute pertaining to the ownership of lands for the purpose of the scheme had arisen as early as 1987-1988. There were two pieces of lands which were applied by the Replanting Board in the name of the Koperasi, the Bukit Keramat Lands; and Sungai Ambat Lands. These lands were applied by the Replanting Board in the name of the Koperasi and subsequently registered in the name of the Koperasi. The dispute was finally resolved through the intervention of the then Deputy Prime Minister, the late Tun Ghafar Baba who had directed that these two pieces of land to be returned to the Koperasi provided the Koperasi bear the development costs of these lands (see exh. D29 at pp. 205-206 of BOE (1)).

[19] At the material time the plantation lands under the RTBB Schemes were managed by Estet Pekebun Kecil Sdn Bhd ("ESPEK") which was a registered company established by RISDA to manage the plantation lands under RTBB. An Estate Handover Agreement dated 30 September 1991 was executed to mark the surrendering of the Bukit Keramat and Sungai Ambat Lands which were under the management of ESPEK, to the plaintiff ("Estate Handover Agreement") (exh. P16 at pp. 111-129 of BOE (1)).

[20] Subsequent to that, the Koperasi had also sought Tun Ghafar Baba's second intervention for the subject lands to be handed and registered in the name of the Koperasi. After some discussions, Tun Ghafar Baba agreed with RISDA's suggestion for these subject lands be registered in the name of RISDA for the

A benefit of the smallholders throughout the nation. Tun Ghafar Baba had refused to accede to the plaintiff's request and directed the subject lands be registered in the name RISDA instead and remained so and be managed by RISDA for the benefits of all smallholders at large.

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[21] A letter was issued to the Koperasi informing the Koperasi of the above-mentioned directive by Tun Ghafar Baba (exh. D33 at pp. 218-219 of BOE (1)).

C **[22]** On 9 February 1994, the Koperasi had commenced an action against ESPEK claiming for excess estate income from the Bukit Keramat and the Sungai Ambat Lands. In the said suit, the Koperasi claimed that ESPEK failed to account to the Koperasi in breach of the Estate Handover Agreement ("the 1994 Suit") (exh. D28 at pp. 199-204 of BOE (1)). The 1994 Suit was D resolved upon RISDA making payments to the Koperasi.

The Subject Lands

[23] It could be gleaned from the plaintiff's ASOC that the lands E which the plaintiff is claiming from the defendant comprised of about 39,804 acres and 74,771 acres of plantation lands respectively. The particulars of these lands could be found at paras. 16 and 19 of the ASOC respectively. Out of nine pieces of lands listed in para. 16, the lands described under item 16.4 and F 16.5 had already been handed over to the plaintiff as the plaintiff is the registered owner of those lands as directed by Tun Ghafar Baba. The Sungai Gawi Lands under item 16.9 of para. 16 previously owned by RISDA had been acquired by the Federal Government and this land is now submerged by water and/or at G below water level. The lands listed at para. 16 of the ASOC are situated in Perak, Kedah, Negeri Sembilan, Johor, Terengganu and Pahang.

[24] At para. 19 of the ASOC, the plaintiff had listed 17 pieces H of land with a total acreage of 74,771 acres which are situated in Perak, Terengganu, Pahang and Johor. The Bukit Saga lands listed under item 19.17 had never been alienated and/or registered in the name of RISDA.

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[25] The titles to the subject lands are for agricultural use, specifically for planting of rubber and/or palm oil.

[26] The first nine pieces of land claimed by the plaintiff as shown under para. 16 of the SOC are reproduced as follows:

Name of Scheme	Acreage	Types of Crop
1. Bukit Kota Peringkat 1 Bruas, Perak	4,350	Rubber/Palm Oil
2. Tanjung Genting Changlun, Kedah	3,815	Rubber
3. Ladang Abdul Kadir Durian Tipus, Negeri Sembilan	3,974	Rubber/Palm Oil
4. Bukit Keramat, Sungai Lui, Negeri Sembilan	1,520	Palm Oil
5. Sungai Ambat Mersing, Johor	4,857	Palm Oil
6. Sungai Chales, Kluang, Johor	1,827	Palm Oil
7. Gerdong Ulu Terengganu, Terengganu	7,300	Palm Oil
8. Bera, Kemayan Pahang	5,874	Palm Oil
9. Sungai Gawi Kuala Brang Terengganu	6,287	Palm Oil
Total	39,804	

[27] The next batch of lands consisting of 17 pieces of lands as stated in para. 19 of ASOC are as follows:

Name of Scheme	Acreage	Types of Crop
1. Bukit Kota Peringkat 1 Bruas, Perak	5,857	Rubber/Palm Oil
2. Bukit Kota Peringkat 2 Bruas, Perak	5,549	Rubber/Palm Oil
3. Serigala, Perak	4,957	Rubber/Palm Oil
4. Ulu Slim, Perak	1,991	Rubber
5. Palong	7,149	Rubber
6. Terengganu Tengah, Peringkat 1	5,505	Palm Oil
7. Terengganu Tengah, Peringkat 2	4,161	Palm Oil
8. Terengganu Tengah, Peringkat 3	4,825	Palm Oil
9. Terengganu Tengah, Peringkat 4	5,132	Palm Oil
10. Terengganu Tengah, Peringkat 5	2,907	Palm Oil
11. Ulu Keratong, Pahang	5,116	Palm Oil
12. Ulu Keratong Peringkat 2 Pahang	1,392	Palm Oil
13. Ulu Keratong Peringkat 3 Pahang	5,695	Palm Oil
14. Ulu Keratong Peringkat 4 Pahang	5,797	Rubber
15. Ulu Cheka	5,548	Rubber
16. Ulu Selidi, Johor	2,000	Rubber
17. Bukit Saga	2,000	Rubber
Total	74,771	

Membership Of Koperasi & Participants Of RTBB

[28] As at 1978, out of 18,048 applications submitted by eligible smallholders to RISDA to participate in the RTBB only 4,662 applications were from the Koperasi members. A total of 16,080 applicants had been registered by RISDA as eligible smallholders. In so far as the Koperasi is concerned only 75% of its members which is 4,865 members are eligible to participate in RTBB and the remaining 25% are not eligible smallholders. Until the close of the plaintiff's case, the plaintiff was not able to furnish to this court the exact number of its surviving eligible smallholders who are eligible to participate in the RTBB.

The Findings Of The Court

Issue 1: Was There An Agreement Between The Plaintiff And Defendant That The Defendant Would Hold The Said Lands On Trust For The Plaintiff Until The Plaintiff Takes Over The Said Lands After Development By The Defendant?

[29] The plaintiff contended that there were indications made by the defendant during meetings between the plaintiff and the defendant that the defendant would hold the lands obtained under the RTBB Scheme on trust for the plaintiff. This is evidenced from exh. P1, extracts of the minutes of the 125th meeting of the Replanting Board dated 29 December 1971 (see p. 1 of BOE (1)). The salient resolution in the said meeting which the plaintiff claimed had indicated that a trust had been created were the words to this effect "Majlis berpendapat bahawa kawasan-kawasan tanam baru berkelompok dalam rancangan perlu ditadbirkan oleh Lembaga hingga ke suatu masa apabila Lembaga memutuskan supaya kawasan itu diserahkan kepada Syarikat Kerjasama Ladang Pekebun-Pekebun Kecil (M) Berhad".

[30] Further, the plaintiff contended that after the understanding that the defendant would hold the lands on trust for the plaintiff, there were follow-up discussions and ultimately it was resolved in the minutes of the Replanting Board's Meeting held on 17 July 1972 (see exh. P9 at p. 55 BOE (1)) that the Replanting Board will be responsible for acquiring and developing the land and thereafter these lands will be handed over to the Koperasi to manage. Upon the establishment of RISDA it was also agreed by both parties as reflected in the Minit Mesyuarat Jawatankuasa RISDA bertarikh 19 April 1973 (exh. P15 at p. 109, BOE (1))

A that "the committee agreed that the management of the smallholders estate would eventually be handed over to the smallholders if RISDA is satisfied that they have the manpower, financial and other requirement to manage it". According to the plaintiff all the above clearly showed that it had been mutually
B agreed that the lands under the RTBB Scheme would first be placed under the management of the defendant and eventually these lands would be handed to the plaintiff if RISDA is satisfied that the co-operative had the means in terms of manpower, finance and other requirement to manage the RTBB Scheme.

C

[31] The defendant, on the other hand, submitted that initially rightly or wrongly the Replanting Board took the view that it could not own lands for the RTBB Scheme. Hence the Replanting Board was of the view that that there must be a land owning co-
D operative to be set up as a vehicle to apply for lands for the purpose of the RTBB. According to the defendant, the plaintiff's entire case which was premised on the two resolutions is erroneous. Learned counsel for the defendant had urged this court to examine the words used in the resolutions referred to by
E learned counsel for the plaintiff to give effect to the intention of both parties at that material time. Further in 1971, RISDA had not been established. Hence these resolutions must be taken in the context that RISDA had not been established in 1971 and must be referring to the lands applied by the Replanting Board in
F the name of the Koperasi. The objective of RISDA under RISDA Act does not only cover smallholders who are members of the Koperasi but thousands of other smallholders who had registered their interest to participate in the scheme.

G **[32]** The coming into force of the RISDA Act had also indicated the change of the wishes and the policies of the Government of the day according to times, need and requirement. Under the RISDA Act, RISDA was the sole body entrusted by the law to implement and administer the RTBB. It is also to be noted that
H no one except the Replanting Board and RISDA were involved with the RTBB Schemes.

[33] It cannot be disputed that the Bukit Keramat Land consisting of 1,250 acres and the Sungai Ambat Land consisting of 4,857 acres were applied by the Replanting Board through the
I plaintiff. These two lands are registered in the name of the plaintiff. It is also not disputed that the rest of the subject lands save for the Bukit Saga Land consisting of 2,000 acres which had

not been alienated to the defendant and the Sungai Gawi Lands which were previously owned by defendant but subsequently acquired by Federal Government for purposes of Tenaga Nasional Berhad (now submerged in the water), are registered in the name of the defendant. It was also the defendant's contention that the subject lands were alienated to RISDA pursuant to the NLC and were in fact registered in the name of RISDA. Hence under the NLC, RISDA is the legal as well as the beneficial owner of the subject lands and the titles of the subject lands which had been vested in RISDA are indefeasible pursuant to s. 92 of the NLC.

[34] It is also not disputed upon the coming into force of the RISDA Act the responsibilities of the Replanting Board had been transferred and vested in RISDA. It is also not disputed that all properties owned by the Replanting Board vests on RISDA. As can be seen in the preamble of the RISDA Act, the scope and object for the establishment of RISDA is much wider as compared to the scope and object of the Ordinance.

[35] Turning now to the dispute at hand. The subject matter of the dispute concerns ownership of land. Therefore the rights of RISDA over the subject lands whether beneficial or legal had to be examined in the context of the NLC. The NLC is a complete code which regulates all matters pertaining to lands in West Malaysia. Therefore any dispute which arose pertaining to the issue of ownership and or legal rights had to be resolved within the four corners of the NLC (see the Federal case of *Pemungut Hasil Tanah, Kota Tinggi v. United Malayan Banking Corp Bhd* [1982] CLJ 23A; [1982] CLJ (Rep) 244.

[36] Section 76 of the NLC empowers the State Authority to alienate state land to any person or body and upon compliance with the procedure outlined in Chapter 3 of Part Five of the NLC. Such alienation is considered complete and effective upon registration.

[37] Section 89 of the NLC provides that the registered document of title is conclusive evidence of title that certain state land had been alienated and/or vested in the person or body named therein as proprietor and subject to conditions imposed by the State Authority. Section 92 provides for indefeasibility of final title as provided under Part Twenty of the NLC.

[38] After having evaluated the evidence before me, it is not disputed that some of the lands which are currently registered in the name of the defendant were in fact originally applied for by the plaintiff. Some of these lands had even been approved by the State Authority to be alienated to the plaintiff. Under the law, application and approval alone are not sufficient grounds for the plaintiff to claim ownership of the subject land as all acts done prior to alienation are not relevant and important to prove ownership. Unless and until the said subject lands are registered in the name of the plaintiff, the plaintiff cannot be said to be the rightful owner of the lands as legal title to alienated land is only vested on the proprietor upon registration pursuant to s. 78(3) of the NLC. Section 78(3) further states that notwithstanding that its alienation has been approved by the State Authority, the land shall remain state land until registration of a document of title had been effected.

[39] This principle of law had been reiterated by the Federal case of *North East Plantations Sdn Bhd v. Pentadbir Tanah Daerah Dungun & Anor* [2011] 2 CLJ 392, a case quoted by learned counsel for the defendant where the Federal Court had stated that as long as the title had not been registered pursuant to s. 78(3) of the NLC in the name of the person or body to whom the land had been approved by the State Authority, such person or body shall not be entitled to the said land. The Federal Court had also emphasised that s. 78(3) gives an implied power to the State Authority to revoke and or cancel any approval granted to a person to whom such approval had been granted. Such person and or body do not have any right in law over the land including any beneficial right notwithstanding fact that the approval had been given by the State Authority. Under the NLC, title to an alienated land is indefeasible only upon registration and nothing less.

(see: *Dr Ti Teow Siew & Ors v. Pendaftar Geran-Geran Tanah Negeri Selangor* [1981] CLJ 134A; [1981] CLJ (Rep) 142; *Mohammad Buyong v. Pemungut Hasil Tanah Gombak & Ors* [1981] 1 LNS 114; [1982] 2 MLJ 53; *Syarikat Perusahaan Seri Connolly Sdn Bhd v. Pengarah Tanah dan Galian, Negeri Perak & Anor* [1998] 2 CLJ Supp 517; *Suharta Development Sdn Bhd v. Ho Lik Sdn Bhd* [1994] 1 CLJ 407).

[40] In short, the title of a particular land shall be vested in the name of the person only upon registration. However the NLC had provided for the indefeasibility of the title to be challenged under

the circumstances provided under s. 340(2)(a) to (c). The first instance is in the circumstances where the said title was obtained through fraud, misrepresentation and/or where the person or body in whose name the land had been registered was privy (s. 340(2)(a)). The second instance is where the registration was obtained by way of forgery, insufficient or void document or instrument (s. 340(2)(b)) and the last scenario is where the title or interest is unlawfully acquired by that person. (s. 340(2)(c)).

[41] As can be seen above in order to challenge the title held by the defendant, the plaintiff will have to show that its case falls under one of the circumstances under s. 340(2)(a) to (c) of the NLC.

[42] Hence the law as it stands as discussed above showed that legal title of land vested upon the defendant upon alienation and registration in the name of the defendant. Therefore, legally RISDA is the rightful owner of the subject lands.

[43] On this reason alone the plaintiff's case ought to be dismissed by this court.

[44] Notwithstanding what I have stated above for the sake of completeness, I will address all issues posed accordingly herein after.

Issue of Trust

[45] The next issue for determination is whether the subject lands were held by the defendant on trust for the plaintiff.

[46] I had explained earlier the plaintiff claimed that from the facts alluded by the plaintiff through their witnesses PW1 and PW2 as well the documentary evidence in exhibits as in P1, P3 and P15, the subject lands were held on trust by the defendant on behalf of the plaintiff. In order to ascertain if a trust had been created let us take a look at some decided cases to gauge if the plaintiff had satisfied the court the ingredients for the creation of a valid trust. The Supreme Court case of *Yeong Ah Chee @ Yan Hon Wah v. Lee Chong Hai & Anor & 13 Other Appeals* [1994] 3 CLJ 20, the court held that for a valid trust to exist there are three essentials which must be present:

(a) Certainty of words;

A (b) Certainty of subject; and

(c) Certainty of object.

[47] In an English case of *Re Kayford Ltd* [1975] 1 All ER 604 cited by learned counsel for the defendant, the court outlined the
B three prerequisites of a valid trust to exist as follows:

(a) The subject matter must be clear;

(b) The beneficial interest is clear; and

C (c) The beneficiaries are clear.

[48] In order to examine whether there is certainty of intention to create a valid trust the words must be clear, unequivocal, irrevocable and imperative. The court will have to examine the
D words in exhs. P1, P3 and P15 to see if the words are clear, unequivocal, irrevocable and imperative and had satisfied the test stated above. Upon scrutinising the above exhibits my findings are that RISDA had agreed to hand over the lands to be managed by the Koperasi subject to the following conditions:

E

(a) After a full reports of the position of the co-operative being received;

(b) RISDA is satisfied with the financial standing of the Koperasi;

F (c) RISDA is satisfied with the position of the Koperasi's capacity in terms of human resources; and

(d) RISDA is satisfied that the Koperasi had the capability to manage the scheme.

G

[49] Hence upon reading these exhibits which the plaintiff claimed had created a trust would lead to a conclusion that the plaintiff would be allowed to take over the management of the RTBB if RISDA is satisfied that the plaintiff has the capacity in
H terms of finance, human resources and management capabilities and upon a report having been submitted to RISDA to prove that the plaintiff is fit to undertake the task.

[50] In deciding the issue at hand, the court must also not forget the very purpose of RISDA was created by the RISDA Act. From
I reading the provision of s. 6 of RISDA Act, it is apparent that

the policy and will of the Government had changed upon the coming into force of the RISDA Act. The RISDA Act had entrusted upon RISDA: A

(a) to undertake the task to administer the fund which was created by the Ordinance; B

(b) to take charge of the management and successful operations of the scheme; and

(c) to carry out replanting and new planting. C

[51] It is obvious that the whole function of the Replanting Board had been vested with RISDA pursuant to an Act of Parliament as a corporate body responsible to continue to perform the task of Replanting Board. RISDA is to take care of all the smallholders irrespective of whether these smallholders are members of the plaintiff or otherwise. D

[52] Upon the coming into force of the RISDA Act, the Government had every intention for RISDA to perform the tasks under the RTBB and not other bodies such as the Koperasi. Pursuant to the Midterm Review of the second Malaysia Plan (exh. D103 at p. 1602 of BOE (6)) RISDA was entrusted to develop 150,000 acres of land under the RTBB Scheme and for the existing scheme to be run and/or taken over by RISDA. E

[53] From the documentary evidence adduced in court there is no evidence that the first certainty had been satisfied by the plaintiff. F

[54] The next essential that had to be satisfied is certainty of subject matter. This would relate to the subject lands. From the testimonial evidence in court, as at 1971 to 1973 at the time of the resolutions (exh. P1 and P3) none of the subject lands had been registered in the Replanting Board and/or RISDA. Evidence would show that the subject lands were registered in the name of RISDA only in 1975. Hence at the material times as claimed by the plaintiff that a trust had been created in favour of the plaintiff, neither RISDA nor the Replanting Board has the legal and/or beneficial title over the subject lands. Hence RISDA did not own the subject lands. In short, the subject matter to create a valid trust could not be identified. Prior to 1973, the titles, locations, size of the subject lands could not be identified and ascertained. Hence the plaintiff had failed to satisfy the court that the second essential for the creation of a valid trust existed. G H I

[55] The last essential to be satisfied is certainty of beneficiary. From exh. P3, the scheme is opened for all smallholders who are entitled to participate in the RTBB who are members of the plaintiff. From the evidence adduced during the trial, out of 16,080 smallholders only 4,378 are eligible smallholders. Not all eligible smallholders are members of the plaintiff. The plaintiff was not able to provide a comprehensive list of its members who had applied to participate in the scheme. As such there is no definite beneficiary to satisfy the court that there is certainty of beneficiary.

[56] In a case quoted by learned counsel for the defendant, *Koperasi Wanita Sarawak Bhd & Anor v. Robert Sim Teck Hock* [2005] 3 CLJ 188, the trust deed was created on 18 June 1981 and the land was only alienated on 27 July 1984. Three years after the creation of the trust deed, the court held that the trust deed would be valid if the title to all lands had already been vested in the name of the defendant.

[57] Reference was also made to *Halsbury & Martin Modern Equity* by Professor Jill E Martin 16th edn. (2001) and at p. 69 where the learned professor wrote that a valid trust can be created upon the title to the property is registered in the name of the trustee. The cases cited below are authorities to show that for a trust to be valid there must be actual transfer of property to the person who the testator intends to provide (see an old case of *Milroy v. Lord* [1862] 4 De GF 264 at pp. 274-275; 45 ER 1185 at 1189-1190). These old cases had been followed in *Yeong Ah Chee @ Yan Hon Wah v. Lee Chong Hai & Anor And 13 Other Appeals* [1994] 3 CLJ 20 where the court had held that the trust is valid if the property is vested in the trustee completely and if the trust is validly declared.

[58] Upon scrutinising the exhibits mentioned above, I am satisfied that these exhibits did not show any intention on the part of the then Replanting Board and/or RISDA to create a trust in favour of the plaintiff over the subject lands. The clear words of these exhibits showed that the Replanting Board and subsequently RISDA would agree for the plaintiff to take over and/or the subject lands would be handed after the Replanting Board and later RISDA carry out a report on the position of the Koperasi as regards its financial standing, position that the Koperasi had the management resources and the Replanting Board and RISDA must also be satisfied that the Koperasi has the capacity to manage the RTBB Scheme.

[59] With the above findings against the evidence that was adduced during the trial, the plaintiff had failed miserably to prove the three essentials that I had outlined in the preceding paragraphs. The plaintiff claim premised on the fact that the defendant was holding the subject lands on trust must therefore fail.

Issue 2: Was There An Agreement Between The Plaintiff And The Defendant That The Lands Obtained From The State Governments For The Rancangan Tanaman Baru Berkelompok ("RTBB") Scheme Will Be Developed By The Defendant For The RTBB Smallholders Who Are Members Of The Plaintiff?

Issue 3: Did The Defendant Breach Any Agreement And/Or The RTBB Requirements When The Defendant Applied And Registered The Subject Lands In The Defendant's Name?

[60] It had been submitted by learned counsel for the plaintiff the interpretation of the words in exh. P1 (p. 1 of BOE (1)), P3 (p. 28 of BOE (1)) and P15 (p. 109 of BOE (1)) would lead to one and only conclusion that there was in fact an agreement made between the plaintiff and the defendant whereby the defendant would develop the subject lands on behalf of the smallholders who are members of the Koperasi and who had applied to participate in the RTBB. It was further contended that there was an understanding between the parties as to how the RTBB Scheme will be carried out by the defendant since the defendant would perform the development of the scheme on behalf of the smallholders. The plaintiff also contended the evidence of PW1 supported the plaintiff's contention that there was such an agreement between the plaintiff and the defendant. This was further strengthened by the evidence of PW2.

[61] In a nutshell the plaintiff contended that there was a valid, binding and enforceable oral contract between the plaintiff and the defendant. The defendant, on the other hand, took the stand that there was no valid and binding contract between the plaintiff and the defendant as claimed by the plaintiff as the essential elements to constitute a valid contract were missing in the factual matrix of this case.

[62] I had discussed the relevant exhibits referred to by learned counsel for the plaintiff in arriving at my findings under Issue 1 above and will adopt the same facts and interpretation herein. It is not denied that the law recognises oral contract. If it is true

A that a valid and binding contract had been created, it is for the plaintiff to prove to this court the existence of the oral contract and its validity. Under the law, the plaintiff had the burden to prove its claim of a valid contract strictly (see *Keongco Malaysia Sdn Bhd v. Ng Seah Hai* [2011] 1 LNS 703; [2012] 7 MLJ 288; *Sang*
B *Lee Company Sdn Bhd v. Suburamaniam Mayawan & Ors* [2011] 1 CLJ 167; *Nuri Asia Sdn Bhd v. Fosis Corporation Sdn Bhd* [2006] 5 CLJ 307; [2006] 3 MLJ 249). Further in order to succeed in a claim premised on oral contract there must be a "preponderance of evidence showing the existence of such an agreement" (see *GN*
C *Muey Muey v. Goh Poh Choo* [2000] 2 SLR 578; *Thiagrajen Veluchamy v. Suraish Naidu Re Naidu & Anor* [2009] 1 LNS 537; [2009] 9 MLJ 68).

[63] One of the essential requirements for a valid contract to exist
D is valuable consideration. What constitutes a valuable consideration had been considered in an old case of *Currie v. Misa* [1875] LR 10 Ex 153 quoted in *Macon Works & Trading Sdn Bhd v. Phang Hon Chin & Anor* [1975] 1 LNS 93; [1976] 2 MLJ 177 as follows:

E

> A valuable consideration in the sense of the law may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.

F **[64]** In light of the above and upon my assessment of the evidence before me both testimonial and documentary, I found the terms of exhs. P1, P3 and P15 which the plaintiff were relying on to prove existence of a valid contract between parties did not stipulate and/or mention what was the valuable consideration for
G the purpose of the purported agreement. The evidence of PW1 and PW2 too did not support the contention.

[65] The purported agreement also lacked another essential feature for a valid contract to exist, which is the element of certainty as to the terms of the contract. Terms such as the time
H frame within which each party to the contract must fulfil its obligations pursuant to the agreement are not stipulated or easily identifiable. As I had illustrated under Issue 1, the language used in exhs. P1, P3 and P15 which the plaintiff claimed had created a valid oral contract between parties is not definite as to indicate
I clear intentions of the parties herein. For want of duplicity, I will not repeat my reasoning above but suffice for me to adopt the same reasoning under this heading.

[66] In view of the above I find no justification in the plaintiff's contention that there existed a valid and binding contract between the plaintiff and the defendant.

Tort Of Conversion

[67] The plaintiff's reliance on the tort of conversion to premise its claim against the defendant is misplaced and had no legal basis as this tort is only applicable to chattels. Hence the subject lands could not be subject of an action in trover as land could not be lost, then found and converted. For a tort of conversion to exist there must be some form of tangible property that can be identified. In *Lloyds Bank Ltd v. Chartered Bank of India, Australia & China* [1929] 1 KB 40, Scruthon LJ held that the tort of conversion provides a remedy in damages for the misappropriation of chattels but not misappropriation of intangibles. In *Oakley v. Lister* [1931] 1 KB 148, *Salmond on Torts* 7th edn. at p. 375 had been quoted as follows:

> a wrong of conversion consists in an act of wilful interference with a chattel, done without lawful justification whereby any person entitled thereto is deprived of the use and possession of it.

[68] The tort of conversion was also discussed in the Malaysian case of *Director of Forestry, Sabah & Anor v. Mau Kam Tong & Ors And Another Appeal* [2010] 3 CLJ 377 where the Court of Appeal had quoted *Clerks & Lindsell on Torts* 6th edn. as follows:

> Anyone who without authority takes possession of another man's goods with the intention of asserting some rights or dominion over them.

[69] The tort of conversion had also been illustrated by Lord Hoffman in *OBG Ltd and Another v. Allan and Others* [2008] 1 AC 1 as follows:

(a) Historically it is a tort against a person's interest in a chattel. This is derived from the action for trover.

(b) This is a tort of strict liability as it involved conversion of one's chattel and of doing an act inconsistent with the rights of the owner.

A (c) Even though the person who commits the tort of conversion is innocent he is still liable for loss caused by his act if the chattel is not recovered by the owner for the value of the chattel.

B **[70]** All the above high authorities seem to suggest that this tort only relates to chattel. In the light of the law and the facts as discussed above, the plaintiff had failed to prove that the tort of conversion had been committed by the defendant. Therefore this ground too has no merits and must fall.

C

Issue Of Limitation

Is The Plaintiff's Claim Against The Defendant Time-barred?

[71] The defendant had raised the defence of limitation to defeat
D the plaintiff's claim over the subject lands. Based upon the undisputed facts the plaintiff's cause of action, if any, would have arisen as early as the 1970s (exhs. P1 (1971), P3 (1973) and P15 (1973)). The subject lands were registered in the name of RISDA in 1975. The plaintiff initiated their claim against RISDA around
E 1980. As this was a claim for recovery of land, any claim against RISDA ought to have been commenced within 12 years from the date of the accrual of the cause of action (see ss. 9(1) & 22(2) of the Limitation Act 1953). Even assuming the latest date was to be taken into consideration which was 1980, the plaintiff ought
F to have commenced its claim on or before 1992. The plaintiff had commenced this action only in 1998. The plaintiff too could not raise the issue that the facts pertaining to the alienation and registration of the subject lands were not within its knowledge as the facts which were disclosed during the trial at one point or
G another showed that the officers of RISDA and the Koperasi were in fact the same persons. Hence the knowledge and facts surrounding the accrual of the cause of action could be imputed. Mohd Isa bin Ibrahim Shah (PW1) was an ex Deputy Director General of RISDA (operations) and having retired only in 1986.
H PW1 was still handling RTBB at the time of the inception of RISDA. RISDA took over the responsibility of the Replanting Board upon the coming into force of RISDA Act on 1 January 1973. Whilst Dato Haji Aliasak Haji Ambia (PW2) had worked with the Replanting Board and joined RISDA in 1972 until 1996.
I He was the retired Deputy Director General (operations) in 1995 and served for another year on contract prior to the retirement. Therefore on this ground alone the plaintiff's action ought to be dismissed by this court.

Non Pleaded Issues

[72] During the course of trial, the plaintiff had also raised issues which were not pleaded and were objected to by learned counsel for the defendant. Issues such as RISDA's utilisation of proceeds from the subject lands and the Koperasi's capability to manage the schemes were issues which were not pleaded by the plaintiff in its ASOC.

[73] It is tried that parties must confine their case within the four corners of their pleadings. The new issues raised were not pleaded in the ASOC and had been strenuously objected to by learned counsel for the defendant. I would not attempt to discuss the law as regards to pleadings as it is so settled and entrenched in our jurisdiction (see *State Government of Perak v. Muniandy* [1985] 1 LNS 117; [1986] 1 MLJ 490; *Yap Nyo Nyok @ Yap Yoon Jin (F) v. Bath Pharmacy Sdn Bhd* [1993] 3 CLJ 188; [1993] 2 MLJ 250; *RHB Bank Bhd v. Kwan Chew Holdings Sdn Bhd* [2010] 1 CLJ 665; [2010] 2 MLJ 188; *Amanah Butler (M) Sdn Bhd v. Yike Chee Wah* [1997] 2 CLJ 79; [1997] 1 MLJ 750; *Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd* [2010] 8 CLJ 629 at pp. 641 to 642; [2010] 6 MLJ 1 at pp. 13 to 14).

Res Judicata

[74] From the evidence adduced, the plaintiff's claim, if any, could only succeed, on claims surrounding the Bukit Keramat Land and the Sungai Ambat Land as both those lands were registered in the plaintiff from the beginning which had been held over by RISDA until these lands were handed over to the plaintiff pursuant to the Estate Handover Agreement entered into between ESPEK and the plaintiff. However all issues pertaining to these lands had been resolved *vide* the 1994 Suit upon RISDA making payments to the plaintiff. Hence this issue is a non issue and the Koperasi would be barred from making claim against RISDA. The 1994 Suit was brought against ESPEK could have been commenced against RISDA.

[75] In these circumstances, the Koperasi has no claim against RISDA in relation to the Bukit Keramat Land and the Sungai Ambat Land.

[76] In view of the above findings, the questions posed for this court's determination must be answered in the following manner:

(a) Was there an agreement between the plaintiff and defendant that the defendant would hold the said lands on trust for the plaintiff until the plaintiff takes over the said lands after development by the defendant?

- The answer is no.

(b) Was there an agreement between the plaintiff and the defendant that the lands obtained from the State Governments for the Rancangan Tanaman Baru Berkelompok ("RTBB") Scheme will be developed by the defendant for the RTBB smallholders who are members of the plaintiff?

- The answer is no.

(c) Did the defendant breach any agreement and/or the RTBB requirements when the defendant applied and registered the said lands in the defendant's name?

- The answer is no.

(d) Does the plaintiff represent all the rubber smallholders in respect of the RTBB Scheme?

- The answer is no.

(e) Whether the purpose of setting up the plaintiff was to represent all the rubber smallholders in respect of the RTBB Scheme? And

- The answer is no.

(f) Was the plaintiff claim against the defendant time-barred?

- The answer is yes.

Conclusion

[77] On the totality of the evidence adduced by the plaintiff through its witnesses, both testimonial and documentary, and having evaluated the evidence of the defendant, I am satisfied that the plaintiff had not discharged the onus of establishing its pleaded case against the defendant on the balance of probabilities. Hence the plaintiff's claim against the defendant was dismissed with costs.

In arriving at the above decision, I had carefully considered the evidence adduced by the plaintiff and the defendant, both testimonial as well as documentary, the submissions by both the respective learned counsels as well as authorities tendered in support of their respective submissions. After hearing a short submission on costs I allowed costs of RM350,000 to the defendant.

[78] Lastly I would like to express my sincere appreciation to both learned counsels who had diligently and professionally conducted the trial before me and assisted me with their well researched submissions to enable me to clear this 14 year old case from the OCVC Aging List.